

“Gross charges” does not include charges for the storage of data or information for subsequent retrieval or charges for the processing of data or information intended to change its form or content. See Section 2(a)(3) of the Act. (This is a PLR.)

November 6, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (accessed at [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200)), is in response to your letter of July 31, 2000 and follow-up information received by fax on September 5, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER, for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated as follows:

This request for a Private Letter Ruling is made on behalf of our client, TAXPAYER (hereinafter ‘Taxpayer’), and requests rulings as to the application of the Illinois Telecommunications Excise Tax (‘TET’) for tax periods beginning on and after June 1, 2000. Neither an audit nor litigation is pending with the Illinois Department of Revenue (‘Department’) involving Taxpayer or the issues presented below. To the best of our knowledge and that of Taxpayer, (1) the Department has not previously ruled on the same or similar issues presented below for Taxpayer or a predecessor; and (2) neither Taxpayer nor any representative of Taxpayer has previously submitted the same or similar issues to those presented below to the Department but withdrew them before a letter ruling was issued

#### **STATEMENT OF FACTS**

Taxpayer provides an answering service to its customers (‘Customers’). To facilitate the service, Taxpayer assigns to each Customer a separate 800 number and each Customer, in turn, provides either the 800 number, or more typically, his or her general business telephone number, to his or her customers (‘Callers’) for their use in contacting or leaving messages with the Customer. Customers and Callers are located in Illinois, as well as in other states. Taxpayer is located in a state other than Illinois, where it operates a call center at which it answers calls to Customers and from which it forwards messages to Customers. Typically, Taxpayer delivers the messages to Customer’s pager, but occasionally faxes the messages to Customer.

To provide the answering service, a Taxpayer employee (referred to as a receptionist) answers telephone calls that Callers make to either the 800 number or to the Customer's general business number (which has been call-forwarded to the 800 number). The receptionist explains that Customer is unavailable and asks Caller whether he or she would like to leave a message for Customer. Caller then explains the reason for the call. The receptionist does not transcribe the message provided by Caller verbatim. Rather, the receptionist distills the information into a relatively short, condensed message and enters the message into a computer. After confirming that the message conveys Caller's intent and entering Caller's name and telephone number, the receptionist transmits an alphanumeric message to Customer's pager unit along with the time and date of the call. Taxpayer owns and operates the paging transmission network used to forward messages to Customers, including paging transmission towers in Illinois used to deliver messages to Illinois Customers.

Taxpayer can also relay Customer-specific information to a Caller. In some instances, a Caller may ask questions regarding Customer's hours of operation or when Customer will be available or will call back. Sometimes, the receptionist will simply explain that Caller is speaking with Customer's answering service and that Customer will be contacted immediately and will respond as quickly as possible. In other cases, the receptionist may provide general information such as office hours and may direct the messages to a specific individual other than the person originally requested by Caller. In many cases the receptionist may refer to a computer information screen that prompts questions intended to solicit the specific information which Customer may need in order to respond appropriately to Caller. In certain emergency situations, the receptionist or other Taxpayer employees may contact the Customer directly by telephone or may transmit the message to more than one individual until receipt of the message is acknowledged. Customers may also retrieve messages by calling in to speak with a receptionist or by requesting written details.

Taxpayer invoices Customers at a contracted monthly flat rate, i.e., a single aggregate charge for a specified monthly allowance of calls answered, and a supplemental charge for each call answered beyond the monthly allowance. The billable call volume is based upon the number of calls answered for a Customer, rather than on the basis of the number of messages transmitted or the duration or distance of each incoming call or outgoing messages. All calls, other than those that are clearly dialed to a wrong number, are logged and counted. As a result, the billable call count includes instances in which the Caller does not leave a message. Taxpayer's invoices do not reflect the separate components of the answering service, e.g., for use of the 800 number or for transmitting a message to a Customer's pager. Callers are not billed for calls using the 800 number. A third-party telecommunications provider charges the 800 calls to the service address of Taxpayer's call center outside of Illinois and bills the Taxpayer as a consumer and not as a telecommunications reseller, with the result that Taxpayer is subjected to applicable federal, state and local taxes.

## **TAXPAYER'S PROPOSAL AND RATIONALE**

As noted above, Taxpayer operates paging transmission facilities in Illinois and other states for use in providing answering services to Customers. Taxpayer has obtained a ruling from another state revenue department that the message transmission component of its operation is not subject to the state's tax on telecommunications under the rationale that Taxpayer's use of a paging network to transmit the messages to customers is incidental and ancillary to the answering service that Taxpayer provides to

Customers. We understand that the Department's regulation makes clear that answering services may qualify from exemption from tax even if bundled with taxable telecommunications. At the same time, Taxpayer is aware that the Department's regulations treat paging services provided directly by a taxpayer as taxable telecommunications even though incidental and ancillary to a non-taxable answering or other value-added service.

The Illinois regulations provide that '[c]harges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are *disaggregated and separately identified in the books and records of the retailer.*' 86 Ill. Adm. Code 495.100(c) [emphasis added]. This provision would literally appear to permit Taxpayer to arbitrarily assign a 'gross charge' equal to or less than Taxpayer's costs of its paging transmissions.

In lieu of arbitrarily assigning taxable gross charges for telecommunications on its books and records, Taxpayer proposes to use actual cost data from its books and records to disaggregate and separately identify the portion of its aggregate monthly and supplemental charges ('service revenue') from Illinois customers that is attributable to the delivery of messages through its paging system and therefore constitutes taxable 'gross charges.' Specifically, Taxpayer proposes to derive gross charges—and, indirectly, the taxable amounts on Customer invoices—by multiplying its Illinois service revenue by the ratio of Taxpayer's global paging system costs to Taxpayer's total costs. On this basis, we would expect 15-20% of Taxpayer's Illinois service revenue to be categorized as gross charges.

Taxpayer's method would create a disaggregated charge based on Taxpayer's books and records that is reasonable. Taxpayer's proposed method would not only guarantee that the charge equals or exceeds the cost of providing that component, but would also insure taxation of a proportionate amount of profit earned thereon. Finally, the proposed method would spare Taxpayer the burden of creating and maintaining new books and records, solely for purposes of complying with Illinois telecommunications tax laws, that would reflect customer-by-customer and invoice-by-invoice gross charges.

## **RULINGS REQUESTED**

- I. Taxpayer need not treat any portion of its service revenue as a resale of the 800 service.
- II. Taxpayer may satisfy the regulation's requirement that taxable charges be 'disaggregated and separately identified in the books and records of the [Taxpayer]...' by multiplying (1) the ratio of Taxpayer's costs attributable to its paging transmissions to Taxpayer's total costs, by (2) its Illinois service revenue.

## **RELEVANT AUTHORITIES**

### **Telecommunications Excise Tax Act**

35 ILCS 630/4. Imposition of tax on interstate telecommunications.

Sec. 4. \*\*\* Beginning after January 1, 1998, a tax is imposed upon the act or privilege of originating in this State or receiving in this State interstate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this paragraph, any taxpayer, upon proof that taxpayer has paid a tax in another state on such event, shall be allowed a credit against the tax imposed in this Section 4 to the extent of the amount of such tax properly due and paid in such other state. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the Use Tax, be made the subject of taxation by the State.

### 35 ILCS 630/2. Definitions.

Sec. 2. As used in this Article, unless the context clearly requires otherwise:

(a) 'Gross charge' means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection thereby by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever.\*\*\*However, 'gross charges' shall not include:

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(2) charges for a sent collect telecommunication received outside of the State;'

(b) 'Amount paid' means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid.

(c) 'Telecommunications', in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser microwave, radio, satellite or similar activities.\*\*\*The definition of 'telecommunications' shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. 'Telecommunications' shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-

end communications Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provisions of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale.

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(n) 'Service address' means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

Illinois Regulation, 86 Ill. Adm. Code 495.100. Meaning of 'Gross Charges'.

(a) 'Gross charge' means the amount paid for the act or privilege of originating or receiving telecommunications in this state and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service cost or any other expense whatsoever. (Section 2(a) of the Telecommunications Excise Tax Act (the Act) [ 35 ILCS 630/2(a)]. A retailer may provide services to customers which are not provided in connection with originating or receiving telecommunications. If such services are not necessary for or directly related to the retailer's provision of telecommunications to customers and the charges for such services are disaggregated and separately identified from other charges, the charges need not be included in 'Gross Charges'. Without limitation, examples of such services not included in 'Gross Charges' are directory advertising; specialized designing and/or engineering services; specialized security measures; and consulting services.

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(c) Gross charges does not include charges for the storage of data or information for subsequent retrieval or charges for the processing of data or information intended to change its form or content (Section 2(a)(3) of the Act). Charges for answering services for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer. Charges for automated data storage, retrieval and processing services or for the use of computer time or other equipment are not included in gross charges. Automated information

retrieval or data processing charges are not included in gross charges. For example, a customer who accesses an on-line computer data base would not be subject to tax on the charge for the data processing or inquiry, but would be subject to tax on the charge for the transmission of the data. If a telecommunications retailer provides both transmission and data processing services, the charges for each must be disaggregated and separately identified in the books and records of the retailer.

## DISCUSSION

### **I. Taxpayer need not treat any portion of its service revenue as a resale of the 800 service.**

Taxpayer should not be required to remit TET on the 800 number calls for each of three reasons:

- (a) *Taxpayer is a user, not a retailer, of 800 service because Taxpayer principally provides an answering service, pays a third party provided for 800 service, including applicable telecommunication taxes, and does not specifically charge Customers for 800 service.*

Taxpayer does not separately charge a Customer for 800 number calls made by Callers to Taxpayer's receptionists. Taxpayer uses the 800 numbers in order to provide answering services to Customers and presents all charges to Customers on its invoices as charges for answering services. These facts are substantially similar to those involving the Internet Service Provider (ISP) in General Information Letter, ST 99-0212-GIL. In ST 99-0212-GIL, the Department provided the ISP with the following guidance, in part:

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d).

It is our general understanding that most Internet access providers do not, as part of their billing, charge customers for such line charges, but instead, pay to their telecommunications providers all transmission costs that they incur while using the service. The single monthly fee charged by such retailers, which often represents a flat charge for a package of items including Internet access, E-mail, and electronic newsletters would generally not be subject to the Telecommunications Excise Tax.

However, please note that persons providing customers with the Internet access described above, but who also provide customers the use of 1-800 service, and separately assess customers with per minute charges for the use of such 1-800 numbers, are considered to be telecommunications retailers. Such retailers will incur Telecommunications Excise Tax on charges made for such 1-800 services. If, however, such Internet service providers do not separately assess customers with per minute charges, but pay their own providers for all transmission costs for the 1-800 service, they are not considered to be telecommunications retailers.

Like the ISP in St 99-0212-GIL, Taxpayer provides a service to its customers that includes the issuance of an 800 number that is necessary to initiate the service. Taxpayer does not separately assess a Customer per minute or other charges specifically for the 800 number, but rather assesses a single fee for the overall answering service. Applying the Department's guidance to this situation, Taxpayer should not be considered a telecommunications retailer subject to TET on 800 number calls because it does not 'separately assess customers with per minute charges, but pay their own providers for all transmission costs for the 1-800 service.'

(b) *An 800 number call made by Caller to Taxpayer is an exempt 'sent collect telecommunication received outside of [Illinois]....'*

The Illinois statutes provide, in part, that '[g]ross charges' shall not include...charges for a sent collect telecommunication received outside of the State....' 35 ILCS 630/2. 'Collect telecommunication' is not defined in the Illinois statutes or the Department's regulations. A 'collect telecommunication' is commonly understood to be a telecommunication that is charged to the receiver rather than the originator of the call with the permission of the receiver. We believe that an 800 number call that initiates Taxpayer's answering service is a collect telecommunication because Caller originates, but is not charged for, the call and Taxpayer gives permission to be and is charged for the call by the third-party telecommunication service provider. Because each 800 number call is a collect telecommunication received outside Illinois, charges for 800 telecommunications are excluded from the definition of gross charges and are not subject to TET.

(c) *Each 800 number call is charged to a service address outside of Illinois at the Taxpayer's place of business.*

According to the statute, '[TET] is imposed upon the act or privilege of originating in this State or receiving in this State interstate telecommunications by a person in this State [on] the gross charge for such telecommunications purchased at retail from a retailer by such person.' 35 ILCS 630/4. 'Gross charge' means the amount paid for the act or privilege of originating or receiving telecommunications in this State....' 35 ILCS 630/2(a). 'Amount paid' means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid.' 35 ILCS 630/2(b). "Service address" means the location of telecommunications equipment from which the telecommunications service are originated or at which telecommunications services are received by a taxpayer. 35 ILCS 630/2(n).

The charge for 800 calls placed by Callers is billed by third-party telecommunication service providers to Taxpayer's service address outside of Illinois where it receives and answers the 800 calls. TET is imposed on the 'gross charge.' In this case, the gross charge paid by the Illinois Customer is zero because the 'gross charge' for the 800 service is charged to Taxpayer's service address outside Illinois and is, therefore, not an 'amount paid' as that term is defined above.

**II. Taxpayer may satisfy the regulations' requirement that taxable charges be 'disaggregated and separately identified in the books and records of the [Taxpayer]...' by multiplying (1) the ratio of Taxpayer's costs attributable to its paging transmissions to Taxpayer's total costs, by (2) its Illinois service revenue.**

Taxpayer assessed flat monthly charges and per-call supplemental charges for answering services on its invoices to Customers.

Illinois Regulation 86 Ill. Adm. Code 495.100(c) provides: 'charges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer.' Illinois statutes, case law and rulings have not provided additional guidance regarding the phrase 'disaggregated and separately identified in the books and records of the retailer.' Some rulings have mentioned the phrase briefly, but offer little clarification. For example, General Information Letter, ST 99-0212-GIL provides, in part:

If Internet access service providers provide both transmission and data processing services, the charges for each must be disaggregated and separately identified. See 86 Ill. Adm. Code 495.100(c), enclosed. The statute does not require disaggregation on the customers' invoice, however. Therefore, it is the Department's position that so long as the non-telecommunications charges are disaggregated from the telecommunications charges in the retailers' books and records, for audit purposes, such disaggregation need not be shown on the customer's invoice. If the non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. If none of the charges billed were for telecommunications, then none of the charges would be subject to tax.

If you do not charge your customers for telecommunications, but merely assess an access charge for an on-line news service, Telecommunications Excise Tax would be incurred. However, if you also charge your customers for telecommunications, you will need to disaggregate the access charges from the telecommunications in your books and records. You would then remit Telecommunications Excise Tax based upon the gross charges for the telecommunications you sell. If you do not disaggregate the access charges from the telecommunications charges, Telecommunications Excise Tax is incurred on the entire amount.

The General Information Letter cited above adds only that the requirement of disaggregation in the books and records is 'for audit purposes.'

Taxpayer does not record gross charges separately, but it does track its costs by function. Disaggregating and separately identifying gross charges based on the ratio of costs incurred in operating and maintaining its paging network is reasonable, auditable and not arbitrary. Under this method, gross profit is also allocated to the taxable telecommunication service. Clearly, Taxpayer could use this reasonable method to record in its general ledger the result of applying this method to each customer transaction, but such an administratively burdensome practice would serve no business or tax compliance purpose. Taxpayer's proposal satisfies the substance, spirit and intent of the regulation's requirement to the same extent as would a separately recorded charge.



Enclosed is a Power of Attorney authorizing us to represent Taxpayer in this matter. Please contact me at #####, if you have questions, require additional information, or for any reason determine that you cannot issue both of the requested rulings.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code Part 495, enclosed.

"Gross charge" is defined under Section 2 of the Telecommunications Excise Tax Act ("Act") as "the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise ...." However, "gross charges" does not include charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content. See, Section 2 (a)(3) of the Act. This exception has been further explained at 86 Ill. Adm. Code 495.100 (c). As that regulation indicates, charges for answering services, whether provided electronically or by live operators, represent charges for the storage of information for subsequent retrieval, and are thus not subject to tax. However, if these charges are provided in connection with taxable telecommunications, they must be disaggregated and separately identified in the books and records of the retailer. If not so disaggregated and identified, they are subject to tax.

Your letter presents a situation in which the taxpayer charges customers a flat monthly fee for its answering service, based on a monthly allowance of calls, with additional charges for each call answered beyond the monthly allowance. The answering service is comprised of several telecommunications components. The client provides its customer with a 1-800 number which callers use to contact the answering service. The taxpayer then contacts the customer with messages by utilizing a paging service which it owns and operates. No specific charge is made to customers for use of the 1-800 number, nor are charges made which separately identify the charges for the paging component for the service.

While charges for 1-800 numbers sold to customers would generally be taxable, we do not believe this is the case in the situation you have described. Instead of making a specific charge to its customers for use of the 1-800 number, the taxpayer contracts with a third party provider for the 1-800 service and pays all applicable telecommunications taxes to that third party provider. The taxpayer does not purchase the 1-800 number for resale, but rather, for its own use in providing an answering service. We must assume, for purposes of this ruling, that the taxpayer does not mark up its cost of the 1-800 number, but merely includes its cost of the 1-800 number in the flat/supplemental charge for its answering service. This being the case, we would consider the taxpayer to be a user, rather than a retailer, of telecommunications. Our ruling is binding only insofar as the taxpayer's practices are consistent with our assumptions. Please be advised that the Department is currently examining the treatment of 1-800 numbers under the Act. If your facts differ from the assumptions we have made, we urge you to provide us with additional details regarding these transactions so that we might issue a ruling on this issue.

The second ruling which you request concerns the paging transmission component of the taxpayer's answering service. Paging services are specifically included in the definition of "telecommunications" subject to tax. See Section 2 (c) of the Act. Although a specific charge is not made to the customer for the paging services, part of the taxpayer's monthly answering service charge represents charges for the transmission of messages by means of paging services. Unlike

the situation presented by use of the 1-800 number component of the answering service, the taxpayer generates its own paging transmission services, rather than paying a third party provider. These charges are subject to tax under the Act. As Section 495.100 (c) dictates, if charges for the paging component of the taxpayer's answering service are not disaggregated and separately identified in the books and records of the taxpayer from the nontaxable charges for the answering service, both the answering service charge and the charge for the paging services are subject to tax.

Your letter indicates that the taxpayer does not record gross charges for the paging component separately, but keeps track of its costs by function. You propose to comply with the regulation's disaggregation requirement by calculating the ratio of the taxpayer's costs attributable to its global paging transmissions to the taxpayer's global costs, and multiplying that ratio by its Illinois service revenue.

Under Section 11 of the Act, taxpayers are required to maintain books and records adequate to document the tax due and any exemptions claimed. See, 35 ILCS 630/11. If such records are not available, the Department will use its best judgment and information to establish the amount of tax due. Based on your representations that the taxpayer does not record gross charges separately and only tracks costs by function, we believe that the method you have proposed for disaggregating and taxing the paging component of the answering service constitutes a reasonable approach. As such, we believe it to be consistent with our best judgment and information, and sufficient to meet the disaggregation requirements of Section 495.100 (c). We must advise, however, that if the Department were to discover that the taxpayer possessed records which more specifically identified the costs of the paging component provided to its Illinois customers, it would decline use or approval of such a formula. In that instance, the formula would no longer constitute the Department's best information and judgment.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Jerilynn T. Gorden  
Senior Counsel, Sales & Excise Tax

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